

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION

DEMETRIUS BROWN,)	
Plaintiff,)	
)	
)	
v.)	C.A. No. 1:04-cv-379E
)	
U.S. JUSTICE DEPT. et. al.,)	
<u>Defendant.</u>)	

**PETITION TO EXTEND TIME TO EFFECT NEW
AND PERSONAL SERVICE UPON DEFENDANT**

COMES NOW, DEMETRIUS BROWN, herein as Plaintiff, proceeding Pro-Se, hereby moves this Honorable Court, the United States District Court for the Western District of Pennsylvania, for an Order Extending Time and for Directing the U.S. Marshals Service to effect new and personal service upon defendant, UNITED STATES Attorney. In support, Plaintiff affirms that;

1. The UNITED STATES Attorney is an indispensable party to the suit against the UNITED STATES. That, under the Federal Rules of Civil Procedure, process is to be served upon the UNITED STATES by: "(1) delivering a copy of the summons and of the complaint to the UNITED STATES Attorney for the district in which the action is brought." See 62B Am Jur 2d, Process §261.

2. In this case, the U.S. Marshals Service has had the mistaken belief of effecting service upon the UNITED STATES by certified mail. For this reason, the Court on October 26, 2005 directed the U.S. Marshals Service "to mail a copy of the complaint, summons, and this order to the U.S. Attorney's Office..." See **Exhibit A**. That, this method of service is improper and ineffective as contemplated by the rule. See **Fed.R.Civ.P. 4(i)(1)(A)**.

3. Nevertheless, service upon the UNITED STATES shall be effected by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the UNITED STATES Attorney. (citing Fed.R. Civ.P. 4(i)(1)(A)). But, however, this did not occur. Instead, as indicated, the U.S. Marshals attempted to effect service by certified mail upon the U.S. Attorney himself. See **Exhibit B**.

4. The Court's direction for the Marshals Service to mail service of process to the U.S. Attorney's Office on 10/26/05 has allowed the Marshals Service over two months to effect service and defendant to evade service. That, it has caused the U.S. Marshals to act without good faith and due dilligence to returning a defective service before time expiration.

5. Personal service within the jurisdiction of the court is the ordinary form of service and must be made in all actions where practicable, where the jurisdiction rests upon the process, and not upon a seizure of property. See **62B Am Jur 2d, Process §188**.

6. The term "personal service" has been defined as the actual or direct delivery of a summons or a copy thereof to the person to whom it is directed or to someone who is authorized to receive it in his or her behalf. The term does not include service by leaving a copy of the papers at the place of residence or abode of the defendant, **nor does it include service by mail.** cf. Fed.R.Civ.P. 4(i)(1)(A).

7. Therefore, a court may not, under the guise of construction, read into a statute a method of substituted service of process where not only is there no such method provided, but where also, by clear language, personal service of the Plaintiff's statement of claim is indicated. See **62B Am Jur 2d, Process §188.**

WHEREFORE, under this reason, Plaintiff request that the Court extend time for good cause shown for effecting new and personal service upon defendant, UNITED STATES Attorney.

I, DEMETRIUS BROWN, hereby affirm and declare under penalty of perjury, 28 U.S.C. §1746, that the foregoing is true and correct.

1/4/06
Dated

Demetrius Brown

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION

DEMETRIUS BROWN,)	
Plaintiff,)	
)	
)	
v.)	C.A. No. 04-379 Erie
)	
U.S. JUSTICE DEPT. et. al.,)	
<u>Defendants.</u>)	

PROOF OF SERVICE

I, DEMETRIUS BROWN, do swear or declare that on this date, January 4th 2006, as required by Fed.R.Civ.P. 4, I have served the enclosed PETITION TO EXTEND TIME TO EFFECT NEW AND PERSONAL SERVICE UPON DEFENDANT- UNITED STATES Attorney with Affidavit to Support on each party to the above proceeding or that of party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in FCI RayBrook's internal mail system for mail in the United States, mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

MEGAN E. FARRELL	at	700 Grant St. Suite 4000
Assistant U.S. Attorney		Pittsburgh, PA. 15219
Western District of PA		(412) 894-7429
		PA ID #76972

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 4th, 2006

Demetrius Brown